

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
4 State Bar No. 237926
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-6343
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3825

11 **BARBIE L. WARREN**
12 **3871 Don Tomas Drive, #7**
Los Angeles, CA 90008
13 **Pharmacy Technician Registration No. TCH**
40903

A C C U S A T I O N

14 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia K. Herold ("Complainant") brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy ("Board").
22 2. On or about December 18, 2001, the Board issued Pharmacy Technician Registration
23 Number TCH 40903 to Barbie L. Warren ("Respondent"). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on April 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b) provides that the suspension/expiry of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4301 states, in pertinent part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.”

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself ... of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself ... or to any other person or to the public ...”

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision.

7 ...

8 (p) Actions or conduct that would have warranted denial of a license.”

9 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
10 revoke a license when it finds that the licensee has been convicted of a crime substantially related
11 to the qualifications, functions or duties of the license.

12 8. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
13 controlled substance, except that furnished upon a valid prescription/drug order.

14 9. Section 4063 states, in pertinent part, that “[n]o prescription for any dangerous drug
15 ... may be refilled except upon authorization of the prescriber.”

16 10. Section 480 states, in pertinent part:

17 “(a) A board may deny a license regulated by this code on the grounds that the applicant
18 has one of the following:

19 (1) Been convicted of a crime. A conviction within the meaning of this section
20 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
21 action which a board is permitted to take following the establishment of a conviction may
22 be taken when the time for appeal has elapsed, or the judgment of conviction has been
23 affirmed on appeal, or when an order granting probation is made suspending the imposition
24 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
25 Penal Code.

26 (2) Done any act involving dishonesty, fraud or deceit with the intent to
27 substantially benefit himself or another, or substantially injure another; or
28

1 (3) Done any act which if done by a licentiate of the business or profession in
2 question would be grounds for suspension or revocation of license.

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4 **OTHER STATUTORY PROVISIONS**

5 11. Health and Safety Code section 11150 provides, in pertinent part, that no person other
6 than an authorized prescriber shall write or issue a prescription.

7 12. Health and Safety Code section 11157 states, in pertinent part, that "[n]o person shall
8 issue a prescription that is false or fictitious in any respect."

9 13. Health and Safety Code section 11170 states, in pertinent part, that "[n]o person shall
10 prescribe, administer, or furnish a controlled substance for himself."

11 14. Health and Safety Code section 11173 states, in pertinent part:

12 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or
13 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
14 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

15 (b) No person shall make a false statement in any prescription, order, report, or record,
16 required by this division.

17 (c) No person shall, for the purpose of obtaining controlled substances, falsely assume
18 the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
19 veterinarian, registered nurse, physician's assistant, or other authorized person."

20 15. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
21 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
22 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
23 prescription, or to possess a controlled substance obtained by such a prescription.

24
25 **REGULATORY PROVISIONS**

26 16. California Code of Regulations, title 16, section 1770, states:

27 "For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 6 **COST RECOVERY**

7 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 12 **DRUG DEFINITIONS**

13 18. Norco and Vicodin ES are among the brand names for compounds of varying
14 dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as
15 designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as designated by
16 Business and Professions Code section 4022.

17 18 **FACTUAL BACKGROUND**

19 19. During the time period between September 2007 through December 2007 (“relevant
20 time period”), Respondent worked as a Pharmacy Technician at Longs Drugs Store #430
21 (“Longs”), located at 8900 Sepulveda Westway, Los Angeles, CA 90045 where she had access to
22 controlled substances and dangerous drugs.

23 20. During the relevant time period, Respondent made use of that access to input her own
24 refill authorizations and process her own prescriptions for **Vicodin ES** and **Norco** in violation of
25 Longs policy. Specifically, Respondent fraudulently obtained prescription refills by showing
26 approvals for and falsely representing the authorization for refilling of controlled substances
27 prescriptions that were never actually authorized by the indicated prescriber.
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21. By this method, Respondent fraudulently created, filled, and acquired for use, at least seven (7) prescriptions, for eight hundred sixty (860) tablets each, of **Vicodin ES** products, and at least seven (7) prescriptions, for one thousand two hundred sixty (1260) tablets each, of **Norco** products, a total of at least 2120 tablets of narcotic controlled substances.

22. On January 17, 2008 during an interview with Longs loss prevention personnel, Respondent admitted to entering her own prescriptions for fill for several medications. Respondent was suspended later that afternoon and officially terminated from Longs on January 23, 2008, approximately one week later.

FIRST CAUSE FOR DISCIPLINE

(Commission of Act Involving Dishonesty and Fraud)

23. Respondent is subject to disciplinary action under sections 4301, subdivision (f) in conjunction with Health and Safety Code section 11157 and California Code of Regulations, title 16, section 1770, in that Respondent engaged in multiple acts of moral turpitude, dishonesty, fraud, deceit or corruption as set forth in paragraphs 19 -22, above.

SECOND CAUSE FOR DISCIPLINE

(Falsely Representing Facts)

24. Respondent is subject to disciplinary action under sections 4301, subdivision (g) in conjunction with Health and Safety Code section 11173, subdivisions (a) – (c) and California Code of Regulations, title 16, section 1770, in that Respondent knowingly made documents that falsely represented the existence of facts as set forth in paragraphs 19 -22, above.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substances without a Valid Prescription)

25. Respondent is subject to disciplinary action under Business and Professions Code sections 4060 and 4022, in conjunction with Health and Safety Code sections 11056(e)(4), 11150, 11170, 11175 and California Code of Regulations, title 16, section 1770, in that Respondent

1 possessed controlled substances without a valid prescription as set forth in paragraphs 19 -22,
2 above.

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4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Refilled Prescription for a Dangerous Drug without Authorization)

6 26. Respondent is subject to disciplinary action under sections 4063, in conjunction with
7 Health and Safety Code section 11150 and California Code of Regulations, title 16, section 1770,
8 in that Respondent fraudulently obtained prescription refills for dangerous drugs without
9 authorization by the prescriber as set forth in paragraphs 19 -22, above.

10
11 **FIFTH CAUSE FOR DISCIPLINE**

12 (Consumption of Alcoholic Beverages in a Dangerous Manner)

13 27. Respondent is subject to disciplinary action under sections 4301, subdivision (h) in
14 that on or about March 11, 2006, Respondent used alcoholic beverages to an extent or in a
15 manner dangerous our injurious to herself, and the public, when she operated a vehicle while
16 having 0.08% and more, by weight, of alcohol in her blood.

17 a. On or about June 6, 2006, after pleading nolo contendere, Respondent was convicted
18 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) (driving
19 while having 0.08% and more, by weight, of alcohol in her blood) in the criminal proceeding
20 entitled *The People of the State of California v. Barbie Warren* (Super. Ct. Los Angeles County,
21 2006, No. 6WA01319). The Court sentenced Respondent to 10 days in Los Angeles County Jail
22 and placed her on summary probation for 60 months, with terms and conditions. The Respondent
23 was ordered to complete an alcohol counseling program, pay fines, fees, restitution and obey all
24 laws.

25 b. The circumstances surrounding the conviction are that on or around March 11, 2006,
26 Los Angeles Police Officers observed the Respondent's vehicle parked on the sidewalk on the
27 west side of Oakwood Ave. The officers also observed Respondent sitting on the sidewalk, on
28 the east side of Oakwood Ave. When the officers spoke with Respondent she stated that she was

1 struck by another vehicle which caused her vehicle to collide into a power pole. The officers
2 could immediately detect an alcoholic odor on Respondent's breath and observed that her eyes
3 were "bloodshot" and "watery." Respondent had slurred speech and an "unsteady gait." When
4 asked if she had been drinking, Respondent stated that she had not, and that a friend spilled a
5 drink on her shirt earlier in the evening. As result of her accident, Respondent sustained a broken
6 nose, fractured cheek bone and a laceration to her forehead. She was taken to Daniel Freeman
7 Marina Hospital where officers conducted a preliminary alcohol screening test, the results of
8 which showed that Respondent had a blood alcohol concentration of .13%.

9
10 **SIXTH CAUSE FOR DISCIPLINE**

11 (Conviction of Substantially Related Crimes)

12 28. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
13 (l), in conjunction with Cal. Code of Regs., title 16, section 1770 in that Respondent was
14 convicted of a crime substantially related to the qualifications, functions or duties of a licensed
15 Pharmacy Technician. Complainant refers to, and by this reference incorporates, the allegations
16 set forth above in paragraph 26 and all subparagraphs inclusive, as though set forth fully herein.

17
18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Actions or Conduct that Warrant Denial of a License)

20 29. Respondent is subject to disciplinary action under section 4301, subdivision (p) in
21 conjunction with section 480, subdivisions (a) – (c) and in that Respondent engaged in actions
22 and conduct that would have warranted denial of a license. Complainant refers to, and by this
23 reference incorporates, the allegations set forth above in paragraphs 19 -28, and all subparagraphs
24 inclusive, as though set forth fully herein.

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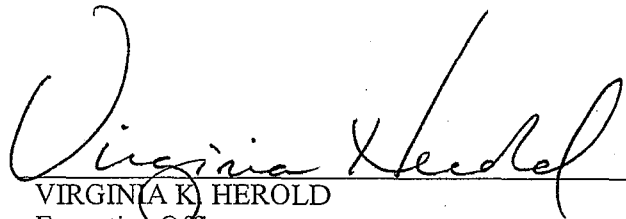
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 40903, issued to Barbie L. Warren
2. Ordering Barbie L. Warren to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/27/11



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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